

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RALPH MILLER,

No. C 02-2118 MJJ (MEJ)

Plaintiff(s),

vs.

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE A
MOTION FOR RECONSIDERATION**

INTERNATIONAL BUSINESS MACHINES, et
al,

Defendant(s).

Before the Court is plaintiff Ralph Miller's Motion for Leave to File a Motion for Reconsideration, filed April 26, 2006. Doc. #473. In his motion, Miller requests that the Court reconsider its April 14, 2006 Order Granting in Part and Denying in Part IBM's Motion for Sanctions (Doc. #422) as it relates to certain witnesses barred from testifying in this case. Miller suggests that the witnesses should only be precluded from offering expert opinions.

Under Local Rule 7-9(b), Plaintiff must specifically show:

- (1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order;
- (2) The emergence of new material facts or change of law occurring after the time of such order; or
- (3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

1 Here, the Court finds that good cause does not exist to reconsider its April 14 order. The
2 basis for the order was not the distinction between whether they were fact or expert witnesses. It
3 was that, despite the Court's direction to Miller to make these witnesses available for deposition,
4 there was "no excuse for Miller's failure to comply with its previous orders and make these six
5 witnesses available for deposition." Doc. #422 at 12:20-21. As this finding remains true, Miller
6 cannot meet his burden under Civil Local Rule 7-9(b) and the Court hereby DENIES Miller's
7 motion.

8 **IT IS SO ORDERED.**

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10 Dated: May 2, 2006


11 MARIA-ELENA JAMES
12 United States Magistrate Judge
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